



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

REBECCA LYNN MYERS,  
Petitioner,

vs.

CATHERINE KENDALL, Superintendent,  
Respondent.

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CIVIL ACTION NO. 2:08-3405-HFF-RSC

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ORDER

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This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the § 2254 petition be dismissed without prejudice as a successive § 2254 petition under Rule 9 of the Section 2254 Rules and without requiring Respondent to file a return. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on December 15, 2008, and the Clerk of Court entered Petitioner's objections to the Report on December 24, 2008.

In her objections, Petitioner asks the Court not to hold her first § 2254 against her and to construe her petition liberally. The Court has construed the petition liberally, but Petitioner's request for the Court to ignore her first habeas petition is contrary to well-settled law, as explained in the Report. Petitioner also requests that the Court provide her with the address for the Fourth Circuit Court of Appeals so that she may seek leave in the future to file a successive petition. That address is:

Patricia S. Connor, Clerk  
U.S. Court of Appeals, Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, VA 23219-3517

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the § 2254 petition be **DISMISSED** *without prejudice* as a successive § 2254 petition under Rule 9 of the Section 2254 Rules and without requiring Respondent to file a return. The Clerk is directed to provide Petitioner with a copy of the Court of Appeals form for seeking leave to file a successive § 2254 petition.

**IT IS SO ORDERED.**

Signed this 29th day of January, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT  
JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.